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5	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
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7	MARK D. ROLLINS,)
8	Plaintiff,) Case No. C08-1431-RAJ-BAT
9	v.)) DEPORT AND
10	DEPARTMENT OF CORRECTIONS, et.al.,	REPORT AND RECOMMENDATION
11	Defendants.))
12))
13	Plaintiff, a Washington state prisoner, has filed a complaint under 42 U.S.C. § 1983,	
14	against the Department of Corrections ("DOC") and corrections officer Matthew Grier ("Grier").	
15	He has also filed an application to proceed <i>in forma pauperis</i> . Because plaintiff has failed to state	
16	a claim on which relief may be granted, the Court recommends his complaint and this matter be	
17	dismissed without prejudice. See 28 U.S.C. § 1915(e)(2)(B)(ii).	
18	Plaintiff alleges that in January, 2008 he was slapped on the side of his face by Grier	
19	during "horseplay." Dkt. 1 (complaint at 3). Shortly thereafter, Grier came up to plaintiff's cell	
20	and said to plaintiff, "I can knock you out and there's nothing you can do." <i>Id</i> . Grier then left	
21	Since then, plaintiff alleges he has "nightmares." <i>Id.</i> He seeks \$2.5 million for "emotional	
22	damages." Id. at 4.	
23	These allegations do not state a claim for relief under § 1983. Under the Prison Litigation	

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1	Reform Act ("PLRA"), "[n]o Federal civil action may be brought by a prisoner for mental or	
2	emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C.	
3	§ 1997e(e); see also Oliver v. Keller, 289 F.3d 623, 627 (9th Cir. 2002). The requisite physical	
4	injury must be more than <i>de minimis</i> for purposes of § 1997e(e). <i>Id.</i> at 628. Here plaintiff does	
5	not allege he was physically injured. Rather, he alleges he suffered "emotional damages" based	
6	on Grier's statements. The only physical contact between plaintiff and Grier was the slap during	
7	"horseplay" but plaintiff makes no claim that the slap caused any physical injury.	
8	Based on the deficiencies in plaintiff's complaint, his in forma pauperis application should	
9	be denied and this action should be dismissed without prejudice. If plaintiff believes that the	
10	deficiencies outlined herein can be cured by amendment to his complaint, he should lodge an	
11	amended complaint as part of his objections, if any, to this Report and Recommendation. A	

BRIAN A. TSUCHIDA

United States Magistrate Judge

DATED this 28th day of October, 2008.

proposed Order of Dismissal accompanies this Report and Recommendation.

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